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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: R-205516

DATE: March 2, 1982

MATTER OF: Kerper House, Inc.

DIGEST:

1. When protester should be aware that competitor is providing services under contract awarded on sole source basis, but does not protest until more than nine months after award, protest is untimely and will not be considered on merits.
2. After extensions to protester's contract have run out, procuring agency has no legal obligation to continue to procure services or to resolicit, and cannot do so if funds are not available.

Kerper House, Inc., a provider of residential community treatment services for the Bureau of Prisons, Department of Justice, in San Antonio, Texas, protests the sole source award of a contract for similar services to Halfway House of San Antonio. By implication, the firm also protests the agency's failure to renew its own expired contract due to lack of funding. We find the first basis of protest untimely; we deny the second.

In its protest, Kerper House alleges that its competitor does not have the facilities or the capacity to be the only one operating a halfway house and receiving pre-release Federal prisoners in the San Antonio area; it also states that it was not given an opportunity to compete for the contract awarded to Halfway House.

The Bureau of Prisons states that contract No. J276c-087 was awarded to Halfway House on February 1, 1981; the firm's prior contract had expired on December 30, 1980. The agency states that sole source negotiations were justified because the Halfway House had facilities and staff for female prisoners which Kerper House lacked.

Kerper House's contract, No. J276c-060, expired on September 22, 1981, but was extended until November 30, 1981. At that time, the Bureau of Prisons states, it was operating under a continuing resolution because no annual appropriation had been passed by the Congress. It was uncertain whether appropriated funds would be available to support community programs; as a result, spending levels had been materially reduced. The agency therefore determined that it would not renew the Kerper House contract because the Halfway House contract was adequate, given the agency's financial situation.

Kerper House, however, indicates that it agreed to extend its contract for two months because the Bureau of Prisons told it this time was required to prepare documents for a competitive procurement. Kerper House argues that if the Bureau of Prisons was required to follow Federal Procurement Regulations with regard to competition for the services covered by its contract, the agency also should have done so with regard to the contract awarded to Halfway House.

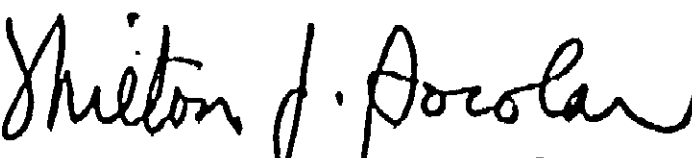
The first issue is whether Kerper House's protest against the sole source award to Halfway House is timely. Kerper House acknowledges that while the contracting officer, who was from the Southern Central Regional Office of the Bureau of Prisons, Dallas, was in San Antonio negotiating with Halfway House, it was contacted concerning a sliding scale payment system which it had been using. Until that time, Kerper House states, it had no notice that a proposal from its competitor, whose contract was expiring, was being considered.

While this limited contact may not have been sufficient to place Kerper House on notice that the Bureau of Prisons was negotiating with Halfway House, whose contract had expired, it appears that Kerper House knew or should have known from the fact that Halfway House continued to provide the services in question that it had been awarded a new contract, for which Kerper House had not had an opportunity to compete.

Our Bid Protest Procedures, 4 C.F.R. § 21.2 (1981), require that protests be filed within 10 days after the basis for them is known or should have been known. But Kerper House did not protest until more than nine months after the February 1, 1981, award, when it became apparent that its own contract would not be renewed. We therefore decline to consider the allegedly improper sole source award.

As for the implied protest concerning the Bureau of Prisons' failure to renew the Kerper House contract or to resolicit for the services which it had been providing, the agency had no legal obligation to continue to procure these services once the extensions to Kerper House's contract had run out, and in any case could not have done so if funds were not available. Kerper House's protest on this basis is therefore without merit.

The protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States